

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 HARRY COUDRIET, WILLIAM )  
11 HOOPER, JOHN LOGAN, and RICHARD )  
12 NEWMAN, individually and as class )  
13 representatives, )

No. C08-5122 FDB

13 Plaintiffs, )

14 v. )

**ORDER GRANTING DEFENDANT  
ILWU'S MOTION TO STAY  
JUDICIAL PROCEEDINGS**

15 INTERNATIONAL LONGSHORE AND )  
16 WAREHOUSE UNION LOCAL 23; )  
17 INTERNATIONAL LONGSHORE AND )  
18 WAREHOUSE UNION; and PACIFIC )  
19 MARITIME ASSOCIATION, )

Defendants. )  
\_\_\_\_\_ )

20 Plaintiffs are "B" registered mechanics working for employers at the Port of Tacoma.  
21 Plaintiffs bring this breach of contract claim asserting that certain contract provisions entitle  
22 them to "A" registration status by virtue of their time in service as "B" mechanics, and also  
23 that they have been denied membership participation rights in Local 23. Local 23 does not  
24 consider Plaintiffs to be Union members.

25 Defendant ILWU, joined by ILWU Local 23, (hereafter ILWU) moves to stay these  
26 judicial proceedings until final resolution of the unfair labor practice complaint issued by the  
27  
28

1 NLRB, which resolution will determine the appropriate collective bargaining representative  
2 for plaintiffs and purported class members.

3 Issues falling within the NLRB's primary jurisdiction include "designation of an  
4 exclusive bargaining agent and identification of an appropriate collective bargaining unit  
5 under § 9 of the LMRA." *Pace v. Honolulu Disposal Service, Inc.*, 227 F.3d 1150, 1156 (9<sup>th</sup>  
6 Cir. 2000). To decide whether a case is within the NLRB's primary jurisdiction, the Court  
7 must look to "whether the major issues to be decided ... can be characterized as primarily  
8 representational or primarily contractual." *United Ass'n of Journeymen v. Valley Engineers*,  
9 975 F.2d 611, 614 (9<sup>th</sup> Cir. 1992). Where the contractual issue "is closely related to an unfair  
10 labor practice charge ... already presented to the NLRB ... a stay often will be required."  
11 *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 747-48  
12 (9<sup>th</sup> Cir. 1985). In determining whether a stay is appropriate, the Ninth Circuit has considered  
13 several factors including: 1) whether the contract interpretation issue is "inextricably bound  
14 up" with the representational issue, 2) whether the Board decision will be issue preclusive in  
15 the district court, and 3) whether the equities weigh in favor of a stay. *Id.* At 747-50.

16 The NLRB issued a complaint against two marine maintenance companies – Pacific  
17 Marine Maintenance Company (PMMC) and Pacific Crane Maintenance Company (PCMC)  
18 — and ILWU. The complaint alleged that the maintenance companies and ILWU violated  
19 labor laws when PCMC recognized ILWU as the collective bargaining representative of its  
20 newly hired employees, who are former employees of PMMC and were represented by the  
21 International Association of Machinists and Aerospace Workers (IAM). The affected  
22 employees in the NLRB case include all four named Plaintiffs and the vast majority of  
23 putative class members in the case before this Court.

24 The NLRB argues that the PMMC employees remain a separate appropriate unit and  
25 could not have been lawfully merged into the broader ILWU-PMA unit. The PMMC, PCMC  
26 and the ILWU argue that the ILWU is the mechanics' collective bargaining representative  
27 because when these employees were hired by PCMC, they were "accreted" into the ILWU  
28

1 bargaining unit. “Accretion” is a federal labor law principle that means a group of employees  
2 have “so effectively merged into more comprehensive unit, or is so functionally integrated  
3 that it has lost its separate identify.” *J&L Plate, Inc.*, 310 NLRB 429 (1993).

4 The NLRB and IAM seek the remedy of returning the mechanics to the same position  
5 that they held prior to being represented by the ILWU, including “recognition of and  
6 bargaining with the IAM as the collective bargaining representative of the PMMC bargaining  
7 unit employees, withdrawal of recognition from the ILWU, and application of surviving terms  
8 and conditions of employment of the expired 2005 IAM-PMMC contract. [Def. Mtn. p. 6]

9 Defendants in the case before this Court argue that the NLRB’s and IAM’s proposed  
10 remedies directly conflict with the relief sought in this proceeding because they are centered  
11 upon restoring the IAM as the mechanics’ collective bargaining representative and removing  
12 any and all employment terms, such as class “B” and class “A” registration, which are  
13 necessarily creatures of ILWU representation and the ILWU’s collective bargaining  
14 agreement.

15 Thus, Defendants here argue that a stay is appropriate, as the factors for consideration  
16 in determining the appropriateness of a stay are satisfied:

17 1. The NLRB’s rulings will have preclusive effect “if it comports with due process  
18 and if the factual finding is necessary to its determination of the unfair labor practice issue.”  
19 *McClatchy*, 762 F.2d at 748. The NLRB ALJ will identify the mechanics’ lawful collective  
20 bargaining representative, which is a factual determination within the agency’s primary  
21 jurisdiction, and as part of this determination, the NLRB ALJ will have to decide whether the  
22 mechanics were accreted into the ILWU’s coast-wide bargaining unit.

23 2. A stay is appropriately issued where “[l]etting the suit go forward would ...  
24 produce[] conflicting or redundant judgments, and a great deal of wasted effort and expense.”  
25 *Valley Engineers*, 975 F.2d at 615. Defendant Unions here assert that in the NLRB case, the  
26 Plaintiffs testified in favor of the NLRB and IAM’s legal position that the IAM, rather than  
27 ILWU, should be their collective bargaining representative. Also, Plaintiff Logan testified in  
28

1 the NLRB case that elevation from Class “A” to Class “B” would take a year, according to  
2 what he was told, whereas in the case in this Court, Plaintiffs allege that Local 23 agents said  
3 that they would automatically receive Class A registration after serving 90 days as casual  
4 employees and a few months (less than one year) as Class B mechanics. (Complaint ¶ 21)

5 Plaintiffs Coudriet, *et al.*, argue that the case before this Court solely concerns contract  
6 rights, and the NLRB case does not relate to the issue of Class “A” registration. Plaintiffs  
7 argue that while in the future, the NLRB may rule that ILWU’s representation is invalid, that  
8 does not derogate from the obligation of the ILWU, Local 23, and PMA to keep their contract  
9 promises to Plaintiffs as long as the ILWU-PMA contract remains in effect.

10 Plaintiffs’ argument fails to convince the Court that this case should not be stayed,  
11 when it is yet to be determined that ILWU is the proper collective bargaining representative  
12 for the Plaintiffs. Plaintiffs’ argument does, in fact, support a conclusion that the decision in  
13 the NLRB case will have preclusive effect. Otherwise, one must merely assume that the  
14 ILWU is the Plaintiffs’ proper collective bargaining representative and that their claims are  
15 purely contractual. Moreover, Defendants point out that Plaintiffs can obtain remedies for  
16 harm caused by ILWU’s “foisting” itself upon plaintiffs through the NLRB proceeding. If the  
17 NLRB and IAM prevail, the extensive remedies to make plaintiffs (and class members) whole  
18 would be addressed, including any abusive practices by ILWU. Even if ILWU prevails,  
19 Plaintiffs can then proceed with this lawsuit. If a stay is denied, and Plaintiffs would be  
20 seeking relief that, according to the NLRB and IAM, constitutes an unfair labor practice.  
21 Obviously, there is conflict between the action in this Court and in the NLRB proceeding.

22 Having considered all of the relevant factors, the Court finds that, on the balance, a  
23 stay of judicial proceedings is warranted. The representational issues pending in the NLRB  
24 proceeding are within the Board’s primary jurisdiction, and plaintiffs’ claims are “inextricably  
25 bound up” with the determination of this representational issue. Moreover, the NLRB’s  
26 determination of the representational issue is entitled to preclusive effect, and the equities  
27 support imposing a stay. *Central Valley Typographical Union No. 46 v. McClatchy*

1 *Newspapers*, 762 F.2d at 747-748 (9<sup>th</sup> Cir. 1985), abrogated on different grounds by 529 U.S.  
2 193; *Sheet Metal Workers International Association, Local Union 66 v. Western Furnaces,*  
3 *Inc.*, 1993 WL 267430 (W.D. WA. 1993). For these reasons, the Court stays the instant  
4 judicial proceeding until final resolution of the unfair labor practice complaint issued by the  
5 National Labor Relations Board ("NLRB"), comprising NLRB Case Nos. 32-CA-21925, 32-  
6 CA-21974, 32-CA-21977, and 32-CB-5932.

7 Based upon the documents submitted and the parties' arguments, and good cause  
8 appearing, IT IS ORDERED:

- 9 1. Motion of Defendant ILWU [Dkt. # 42], Joined by Defendant ILWU Local 23  
10 [Dkt. # 43], To Stay Judicial Proceedings is GRANTED;
- 11 2. The Court further orders that the parties must file a Joint Status Report within 30  
12 days after the NLRB decides the representational issue or within one year after the  
13 date of this Order, whichever occurs first.

14  
15 Dated this 22<sup>nd</sup> day of July 2008.

16  
17 

18 FRANKLIN D. BURGESS  
19 UNITED STATES DISTRICT JUDGE  
20  
21

22 PRESENTED BY:  
23 JENNIFER MARSTON, WSB No. 32123  
24 E-Mail: jmarston@leonardcarder.com  
25 LEONARD CARDER LLP  
26 1188 FRANKLIN STREET, SUITE 201  
27 SAN FRANCISCO, CA 94109  
28 Telephone: (415) 771-6400  
Fax: (415) 771-7010  
Attorneys for ILWU